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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,754	10/24/2003	David E. Wenstrup	5060A	2438

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EXAMINER	
AFTERGUT, JEFF H	

ART UNIT	PAPER NUMBER
1733	

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/693,754	WENSTRUP, DAVID E.	
	Examiner	Art Unit	
	Jeff H. Aftergut	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 12-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 12-26 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 10-24-03.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 12-26 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 11-25 of prior U.S. Patent No. 6875713. This is a double patenting rejection.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 12-14, 16 and 22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Adams et al.

Adams et al suggested that it was known to form a composite material including the steps of blending a low melting temperature fiber with a high melting temperature fiber (column 3, lines 43-51) to form a first or core batting 14 which was formed via an interentangling and consolidating operation by needle punching in a needle loom. The reference taught that a cushioning layer 12 formed from any nonwoven material was placed upon the core fiber batting 14. the reference taught that one would have attached to cushioning layer of fibers 12 to the core layer of fibers 14 via a needling operation, see column 4, lines 40-44. the reference additionally taught that one skilled in the art would have applied a face textile 10 onto the cushioning layer of fibers 12 with an adhesive used to join the textile fabric 10 to the cushion layer 12, see column 4, lines 51-53, column 4, lines 57-62, column 4, line 68-column5, line 3, column 5, lines 13-22. the reference to Adams additionally suggested that those skilled in the art would have heated the assembly to a temperature suitable for thermal bonding, see column 5, lines 39-42, column 6, lines 1-6. the reference taught all of the recited steps of the claim as presented. It should be noted that one viewing the reference would have had to pick the specific manner of adjoining the batting and cushioning layer (from the choices of needle punching, adhesive and fusion) as well as pick the specific manner of joining the exterior textile face (from adhesive or extrusion) as well as the specific use of a textile for the exterior (from leather, plastic, nonwoven or woven materials). As one would have to pick and choose from the various lists (albeit small lists of choices) it would have been understood that one skilled in the art nonetheless would have had to make the specified choices. It would have been obvious to one of ordinary skill in the art at the

time the invention was made to choose to employ a needle punching and adhesive for joinder of the specified layers as well as the use of a textile for the exterior layer of the assembly in the process of making a composite as taught by Adams et al as the reference suggested that the exterior facing was for aesthetic purposes and the use of needle punching was identified as a desirable means for assembly of the cushioning to the batt (and adhesive was identified as preferred with a fabric film laminate as it would have ensured a tight assembly).

Regarding claim 13, note that the reference taught the materials were of the same chemical nature (synthetic materials). Regarding claims 14 and 16, note example 1 for instance where the batt had 50% by weight low melting point fiber. Regarding claim 22, note that the reference suggested that one skilled in the art would have molded the assembly to make a portion of a luggage case.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 12-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams et al in view of Weinle et al.

Adams et al is discussed above in paragraph 5 and applicant is referred to the same for a complete discussion of the reference. The reference failed to teach that one

skilled in the art would have mass-produced the assembly and rolled the material up followed by severing of discrete lengths of the material and use of the same in a molding operation. However, in the manufacture of a composite from a fiber batt, it was well known to assemble the batt and subsequently roll the same up followed by severing the roll of material into discrete lengths and molding the same as evidenced by Weinle et al. Applicant is advised that the reference to Adams suggested that those skilled in the art at the time the invention was made would have incorporated a molding step subsequent to assembly of all of the layers together in order to shape the composite material. The reference was silent as to provision of an indefinite supply of the material followed by a severing to provide a discrete length material suitable for molding. However as evidenced by Weinle et al one skilled in the art would have understood the various techniques utilized in batt formation followed by rolling the formed material up. The roll of material was then unrolled, discrete length cut from the composite material, and the material was molded. The reference evidenced that those skilled in the art additionally were well aware of cross lapping operations. The applicant is referred to Figures 4 and 5 of the reference. Note that cross lapping in batt formation is taken as well known for batt formation. Such cross lapping operation clearly is a laying of the material in a cross machine direction. Additionally to supply the cushioning layer in the machine direction and lay the same upon the batting is taken as the usual manner of assembly of the continuous length materials whether the cushioning layer was formed upon the batting or preformed and laid upon the same in the machine direction. The manner in which one formed the cushioning layer and the batting layer in

the operation is taken as well known and conventional in the art. Additionally the percent of low melting point fibers disclosed by Adams et al was merely an example of the percentage of low melting point fibers and those versed in the art would have understood that the percentage of low melting point fibers would have been determined through routine experimentation as a function of the strength of the bonding one desired to attain in the assembly and the degree of melting. Such would have included 70 percent low melting point fiber and such a percentage is taken as conventional in the art of batt formation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of Weinle et al to form a rolled up assembly in a continuous operation followed by severing discrete lengths of the same for subsequent shaping and/or molding as such would have provided for a more efficient manner for forming the assembly prior to molding (rather than one at a time) in the process of making a composite molded assembly from a batting in accordance with Adams et al.

Applicant is referred to the discussions above regarding the various dependent claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
May 5, 2006

GREGORY MILLS
QUALITY ASSURANCE SPECIALIST